IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5685 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI P MARU

Versus

DEPO MANAGER (A)

Appearance:

MR CB DASTOOR for Petitioner

None presento for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/07/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. Inn the petition, the petitioner prayed for quashing and setting aside of the action of the respondents in

continuing the petitioner as part time sweeper since last 17 years by denying him absorption as a permanent sweeper as being bad in law, illegal, arbitrary and discriminatory, violative of constitutional guarantee enshrined upon the petitioner and not in consonance with the police decision laid down by the respondents vide circular dated 26.12.80. Next prayer has been made to declare that the respondents are under obligation to confirm the petitioner as full time sweeper and to pay the petitioner salaries accordingly. Further prayer has been made for direction to the respondents to forthwith give more number of working hours to the petitioner as part time sweeper and to pay him salary accordingly as is being given in the case of junior part time sweepers. Lastly, it is prayed to give directions to the respondent to produce before this court, the Circular, whereby the respondents have laid down the policy with regard to confirmation of a part time employee, circular dated 26.12.89 or any other circular modified or revised thereafter, pending the final disposal of this petition.

#. Notice was issued in this case on on 20.8.91 on which date interim relief in terms of para 17(D) has also been granted. Thereafter, this writ petition was admitted on 17.2.92. Reply to the special civil application is filed by respondents and therein, they have stated that in the Corporation, in Ahmedabad, there are only five permanent posts of sweepers on which incumbents are already working. There is no rule or regulation of the Corporation which entitles the petitioner to claim regularization after working for some years as part time sweeper. It is submitted that part time sweepers are being engaged by the Corporation as this work is only a part time work.

#. In the Corporation, and more particularly, looking to the nature of work which are to discharged by the sweepers, it is difficult to accept that it is a work of permanent nature of full time. It is a work which has to be finished by this class of persons before the office starts its functioning. The learned counsel for the petitioner, during the course of arguments, has given out that sweepers have also to sweep rooms etc. in the office. Even if it is taken to be so, this is also a work which is to be finished before the office starts functioning. The learned counsel for the petitioner has given out that five persons are not sufficient to carry out this sweeping and cleaning work of the office, toilets, lavatories, roads, etc. It may be true and that is the reason that in addition to five employed sweepers, the Corporation is engaging services of the part time

sweepers. Because full time work is not available to the petitioner, I fail to see any justification in his approach to this court for writ of Mandamus to regularize his services. If such a right is issued, then it will unnecessarily create financial burden on the Corporation. These part time sweepers are employed in the for part time work and if such directions are given then it will be nothing but only a surplus staff with the Corporation to be paid full salaries. This cannot be ordered. It is understandable that the Corporation, for the work of this nature, employs sweepers on part time basis but in the regular employment, reasonable reservation is made for this category of employees to be given appointments. For this, regulations are to be amended but it is a matter for consideration of the Corporation. However, there is no legal or fundamental right of the petitioner which can be said to be infringed in the present case. The part time employee has no fundamental or legal right for regularization in services and more so at the cost of public interest if any amount is to be spent by the Corporation for salaries to be paid to the employees for whom full time employment is not there, then it is certainly against public interest. Even if some policy or circular is there of the Corporation though it is not admitted by the Corporation, to regularize services of part time sweepers, it is difficult to accept it in public interest. The appointments are to be made only after following procedure of open selection and some reasonable percentage be fixed for petitioners in the selection by appointment. That seems to be the only proper way which will serve double purpose, i.e. part time sweepers will not have this agony, suffering and feeling and the Corporation will not be unnecessarily burdened with these heavy expenses of salaries to be paid to these persons after regularizing them though full time work may not be there.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. No order as to costs.

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(sunil)